

HOUSE BILL NO. 590

INTRODUCED BY D. FERN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CRIMINAL PROCEDURE LAWS RELATED TO SEXUAL
5 OFFENSES; PROVIDING THAT CHILD VICTIMS OF SEXUAL OFFENSES MAY REFUSE TO SUBMIT TO
6 PRETRIAL INTERVIEWS BY DEFENDANTS OR TO SET REASONABLE CONDITIONS ON THE CONDUCT
7 OF INTERVIEWS TO WHICH CHILD VICTIMS CONSENT; AMENDING SECTION 46-24-106, MCA;
8 PROVIDING PROCEDURE FOR A DEFENDANT TO MOVE FOR AN INTERVIEW OF A CHILD VICTIM OF A
9 SEXUAL OFFENSE; PROVIDING FOR A HEARING; PROVIDING FOR REASONABLE ACCOMMODATIONS
10 FOR THE CHILD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 ~~Section 1. Section 46-24-106, MCA, is amended to read:~~

15 ~~"46-24-106. Crime victims -- family members -- right to attend proceedings -- exceptions -- right~~
16 ~~to receive documents -- rights during interview -- pretrial interview involving child victim. (1) Except as~~
17 ~~provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing~~
18 ~~conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter~~
19 ~~5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the~~
20 ~~victim has been subpoenaed or required to testify as a witness in the trial or hearing.~~

21 ~~(2) A judge may exclude a victim of a criminal offense from:~~

22 ~~(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or~~

23 ~~(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a~~
24 ~~youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.~~

25 ~~(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion,~~
26 ~~the victim must be allowed to address the court on the issue of exclusion prior to the findings.~~

27 ~~(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that~~
28 ~~the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a~~
29 ~~showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that~~
30 ~~the defendant's right to a fair trial would be jeopardized if the family member is not excluded.~~

1 ~~_____ (5) As used in this section, "victim" means:~~

2 ~~_____ (a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as~~
3 ~~a result of:~~

4 ~~_____ (i) the commission of an offense;~~

5 ~~_____ (ii) the good faith effort to prevent the commission of an offense; or~~

6 ~~_____ (iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or~~

7 ~~_____ (b) a member of the immediate family of a homicide victim.~~

8 ~~_____ (6) (a) Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive,~~
9 ~~upon request and at no cost to the victim, one copy of all public documents filed in the court file.~~

10 ~~_____ (b) If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to~~
11 ~~the victim's parent or guardian instead of to the minor victim.~~

12 ~~_____ (c) Subsection (6)(a) does not apply to:~~

13 ~~_____ (i) trial transcripts;~~

14 ~~_____ (ii) trial exhibits;~~

15 ~~_____ (iii) court proceedings conducted under Title 41, chapter 5; or~~

16 ~~_____ (iv) documents the prosecutor determines would adversely affect the prosecution if released.~~

17 ~~_____ (7) A victim of a criminal offense has the right, upon request, to have a victim advocate present when~~
18 ~~the victim is interviewed about the offense.~~

19 ~~_____ (8) (a) In a case involving a sexual offense, as defined in 46-23-502, a child victim:~~

20 ~~_____ (i) may refuse to submit to a pretrial interview by the defendant, the defendant's attorney, or another~~
21 ~~person acting on behalf of the defendant; or~~

22 ~~_____ (ii) may set reasonable conditions on the conduct of any pretrial interview to which the child victim~~
23 ~~consents and may terminate the interview at any time or refuse to answer any question during the interview.~~

24 ~~_____ (b) THE COURT MAY, AFTER A HEARING AND UPON A FINDING OF SUBSTANTIAL NEED FOR THE PREPARATION OF~~
25 ~~THE DEFENDANT'S CASE, ORDER THAT AN INTERVIEW BE CONDUCTED OR COMPLETED.~~

26 ~~_____ (b)(c) For the purposes of this subsection (8), "child victim" means a victim who is under 17 16 years~~
27 ~~of age. The term includes a victim's immediate family member who is under 17 years of age."~~

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29 NEW SECTION. SECTION 1. INTERVIEW OF CHILD UNDER AGE 16. (1) A DEFENDANT MAY NOT INTERVIEW A
30 CHILD UNDER THE AGE OF 16 WHO ALLEGES TO BE THE VICTIM OF SEXUAL ABUSE AS PROVIDED IN 45-5-502, 45-5-503,

1 45-5-504, 45-5-507, 45-5-508, OR 45-5-625, OR AN IMMEDIATE FAMILY MEMBER OF THE CHILD WHO IS ALSO UNDER THE
2 AGE OF 16, EXCEPT BY AN ORDER OF THE COURT UPON A MOTION SHOWING THAT THE DEFENDANT HAS EXCEPTIONAL
3 CIRCUMSTANCES THAT NECESSITATE INTERVIEWING THE CHILD VICTIM.

4 (2) UPON A MOTION UNDER SUBSECTION (1), THE COURT MAY, IN ITS DISCRETION, ORDER AN INTERVIEW. IF THE
5 COURT ORDERS AN INTERVIEW, THE COURT SHALL LIST THE REASONS FOR AND SCOPE OF THE INTERVIEW AND, IF
6 REQUESTED, PROVIDE ANY REASONABLE ACCOMMODATIONS FOR THE CHILD VICTIM FOR THE INTERVIEW.

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8 NEW SECTION. SECTION 2. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN
9 INTEGRAL PART OF TITLE 46, CHAPTER 15, PART 3, AND THE PROVISIONS OF TITLE 46, CHAPTER 15, PART 3, APPLY TO
10 [SECTION 1].

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12 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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